

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 163

June 10, 1999, 4:14 p.m.
Page S-6850 Temp. Record

Y2K LAWSUIT ABUSE PROTECTIONS/Free & At-Cost Computers or Repairs

SUBJECT: Y2K Act . . . S. 96. Gorton motion to table the Boxer modified amendment No. 621 to the McCain substitute amendment No. 608.

ACTION: MOTION TO TABLE AGREED TO, 66-32

SYNOPSIS: As reported, S. 96, the Y2K Act, will enact numerous reforms to protect companies from abusive litigation related to year 2000 (Y2K) computer date change problems. Without passage of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems.

The McCain substitute amendment would make additional compromise changes (see vote No. 120 for a description of the first set of compromise changes), including that it would eliminate the director and officer liability caps, it would eliminate punitive damages caps for businesses with more than 50 employees, it would provide that State evidentiary standards would be used in specific situations, and it would preserve the protections provided in the Year 2000 Information and Readiness Disclosure Act.

The Boxer modified amendment would require a defendant to provide a repair or a replacement to a small-business or consumer plaintiff for any product with a Y2K problem during the 90-day "cooling off" period (30 days of that 90-day period will be to give a manufacturer an opportunity to respond to a notice sent to it informing it of a problem, and 60 days of that period will be to give the manufacturer a chance to attempt to fix the problem before it is sued). Under the Boxer amendment, a manufacturer would be required to fix or replace, for free, a Y2K problem in any product first offered for sale after January 1, 1995, and would be required to fix or replace, at cost, a Y2K problem in any product first offered for sale between January 1, 1990 and January 1, 1995. If a defendant did not comply, the court would consider that failure in the assessment of any damages, including economic losses and punitive damages.

During debate, Senator Gorton moved to table the Boxer amendment. A motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those opposing the

(See other side)

YEAS (66)			NAYS (32)			NOT VOTING (2)	
Republicans (52 or 98%)		Democrats (14 or 31%)	Republicans (1 or 2%)		Democrats (31 or 69%)	Republicans (2)	Democrats (0)
Abraham	Hatch	Baucus	Jeffords	Akaka	Inouye	McCain ⁻²	
Allard	Helms	Bayh		Biden	Johnson	Thomas ⁻²	
Ashcroft	Hutchinson	Bingaman		Boxer	Kennedy		
Bennett	Hutchison	Dodd		Breaux	Kerrey		
Bond	Inhofe	Feinstein		Bryan	Lautenberg		
Brownback	Kyl	Kerry		Byrd	Leahy		
Bunning	Lott	Kohl		Cleland	Levin		
Burns	Lugar	Landrieu		Conrad	Mikulski		
Campbell	Mack	Lieberman		Daschle	Murray		
Chafee	McConnell	Lincoln		Dorgan	Reed		
Cochran	Murkowski	Moynihan		Durbin	Reid		
Collins	Nickles	Robb		Edwards	Sarbanes		
Coverdell	Roberts	Rockefeller		Feingold	Schumer		
Craig	Roth	Wyden		Graham	Torricelli		
Crapo	Santorum			Harkin	Wellstone		
DeWine	Sessions			Hollings			
Domenici	Shelby						
Enzi	Smith, Bob						
Fitzgerald	Smith, Gordon						
Frist	Snowe						
Gorton	Specter						
Gramm	Stevens						
Grams	Thompson						
Grassley	Thurmond						
Gregg	Voinovich						
Hagel	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

motion to table favored the amendment.

Those favoring the motion to table contended:

We tried in good faith to reach a compromise on this amendment, but its supporters were just too extreme. They have stridently mischaracterized the cooling off and remediation period in this bill, and they have insisted on vague demands for action that leave unclear who must fix, and pay, for exactly what. Most objectionably, they have insisted that products made from 1995-on have to be fixed for free or replaced, and they have insisted that every product made from 1990 through 1994 has to be fixed at cost. Both requirements would lead to huge, unfair costs for manufacturers. This amendment may as well be called "The Free Computer Act of 1999."

Supporters of this amendment have made the extremely misleading assertion that this bill will not require manufacturers to do anything in the 90-day cooling off period but acknowledge that a complaint has been made. In response, companies want that period, and they have asked us for it, so they can fix their products that have Y2K problems before they are sued. It does not make any sense to suggest that the computing industry asked us for this opportunity so that they could ignore it. Further, if they ignore it, they will be sued. Also, if there ever are any companies that decide to engage in the type of egregious behavior in which our colleagues imagine they are likely to engage, then they will be subject under this bill to punitive damages and joint and several liability. This 90-day cooling off period will not protect disreputable companies.

The Boxer amendment is vague as to who must repair or replace exactly what. A \$4,000 computer system may have a Y2K problem stemming from a single computer chip. Further, that same chip may work correctly in some operating systems but not others. In such a case, who pays for what? Does the retailer provide a new computer? Does the computer manufacturer write new software to make the chip function properly? Does the chip manufacturer invest in designing a new chip?

The most extreme part of this amendment is that it would require computers that are already several generations old to be repaired or replaced for free, and computers that are virtually antiques to be repaired or replaced at cost. The computer industry is advancing so rapidly that the Internal Revenue Service, in most cases, has taxpayers write off the value of a computer in 3 years. This bill, though, would require any computer up to 5 years old to be replaced or repaired for free. Hardware and software typically are not made for such products. In many cases, it would be much cheaper for a company just to give a free computer away than it would be to try to find a way to fix such outdated computers. For computers made between 1990 and 1995 the problem would be even worse. Millions of Americans, we imagine, would find this provision to be a huge windfall. They could dig their old personal computers out of their attics and demand that manufacturers either come up with some way of fixing them or of giving them new computers at cost. The easy choice for a manufacturer would be to take the latter course.

As our colleagues have noted, most computer manufacturers are already making reasonable efforts to fix Y2K problems in their customers' older computers. Also, as we said at the outset, we are willing to try to find a way to make certain that all manufacturers make such reasonable efforts. However, the Boxer amendment is just too extreme. We urge our colleagues to table it.

Those opposing the motion to table contended:

We are amazed that our colleagues are not enthusiastically supporting our amendment. It is the very model of simplicity. All it would do is require a computer manufacturer to fix any product it made within the last 10 years if it had a Y2K problem. A manufacturer would be given 90 days to fix a problem after it had been told of the problem's existence. Products that were 5 years to 10 years old would have to be fixed at cost, and products that were less than 10 years old would have to be fixed for free (because every computer company was well aware of the impending Y2K problem by 1995). The plaintiff would not be allowed to sue the company during that 90-day waiting period. If the company failed to act, then it could be sued, and its failure to fix the problem could be considered when assessing damages against it. This bill also has a 90-day waiting period before a suit can be filed against a company for a Y2K problem, but during that time frame a company will not have to try to fix the problem. Instead, it can just go about preparing its legal defense. As we understand this bill, the whole purpose is to try to avoid litigation--the Boxer amendment would accomplish that end in nearly every case. We note that for most manufacturers this amendment is irrelevant, because they are already fixing their old products for free. Every Dell product since 1997, for instance, has been Y2K compliant, and the company has been fixing its older computers that are still in service. We think that all companies should be ordered to behave responsibly, and, if they do, there will be no need for lawsuits. Unfortunately, our colleagues have been intransigent in their opposition to this amendment. We have made some modifications to accommodate their concerns, but even after making those modifications they tell us our amendment is unacceptable. We urge our colleagues not to be extreme. We urge them to accept this amendment.